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NHTSA Docket No. 99-6550 -15  
Docket Management, Room PL-401  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590

**Heavy Vehicle Antilock Brake System (ABS)  
Performance Requirement Single-Unit Trucks and Buses  
Notice of Proposed Rulemaking, 64 FR 71377 et seq., December 21, 1999**

Advocates for Highway and Auto Safety (Advocates) is pleased to file these supplementary comments with the National Highway Traffic Safety Administration (NHTSA) in response to the notice of proposed rulemaking (NPRM) on Heavy Vehicle Antilock Brake Systems (ABS) Performance Requirement, U.S. DOT docket number NHTSA-99-6550. The National Truck Equipment Association (NTEA) has filed comments dated February 18, 2000, (docket entry NHTSA-99-6550-4) in response to the NPRM which challenge the legitimacy of the adoption of a braking-in-a-curve test for ensuring the antilock braking system (ABS) performance of single-unit trucks (SUTs) and buses. NTEA comments assert two claims. The first is an argument that the proposed regulatory action fails to meet the legal tests established in *Paccar Inc. v. NHTSA*, 573 F.2d 632 (9<sup>th</sup> Cir.) *cert den.* 439 U.S. 862 (1978), viz., that the compliance test regime in the NPRM is not practicable. Advocates will not address this legal argument in these supplementary comments save to point out that the factual record of ABS performance in this docket, and the rulemaking record affecting articulated vehicles through ABS equipment standards and compliance testing for truck tractors in the preceding docket on this subject, amply demonstrate that the agency can sustain this proposed rule on the legal grounds cited in the *Paccar* decision.'

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'In *Paccar*, the court based its decision that the standard was not "practicable" with respect to the specific circumstances and general problems of ABS performance at the time the final rule was issued. No widespread performance problems with ABS technology exist today; the technology is demonstrably sound and reliable. Furthermore, with respect to the issue of compliance testing, the inability of final stage manufacturers to conduct testing has not been established. NTEA's claims of economic infeasibility to conduct testing are stated conclusorily throughout its docketed comments. The agency suggests several options which would make testing less burdensome and yet "practicable." 64 FR 71383. Simple invocation of the facts in *Paccar*, a 22 year old precedent, cannot sustain the industry's burden of proof that any form of testing acceptable to the agency is impossible.



The second point relied on by NTEA is the invocation of the agency's own language in the NPRM, as cited on page one of NTEA's comments, *supra*: "We have since conducted ABS braking-in-a-curve tests . . . All these vehicles passed the performance requirements with a large margin of compliance . . . we project no additional benefits by requiring these performance tests . . . 64 Fed. Reg. 71384 (Dec. 21, 1999)."

Although NTEA does rely on an appeal to "no additional benefits" at the outset of its comments and returns to it in a single conclusory sentence in its final paragraph, NTEA in fact articulates no arguments indicating that this action by the agency is illegal, although it is clear that the purported opprobrium of setting a standard without proof of additional benefits is intended to sway NHTSA to close this docket without proceeding to a final rule.

It is noteworthy that the actual argument of the agency has been truncated through the selective use of ellipsis which distorts the actual import of its point in the Federal Register. In fact, what NHTSA asserted in the latter part of the abbreviated NTEA quotation was: "While we project no additional benefits by requiring these performance tests, *they will help assure that minimum levels of safety are maintained.*" 64 FR 71377, 71384 (emphasis supplied). The agency's point here is one well taken and equally well established: when specific levels of vehicle performance are found to fulfill dynamic tests used to check the safety adequacy of specific equipment, the agency can and does ratify this level of performance by requiring a compliance test in a regulation.

Indeed, this logic primarily lay behind NHTSA's 1995 final rule establishing the extension of side impact protection to vans, pickups, and sport utility vehicles (LTVs). The point of regulation is often the redaction of a minimally desirable safety *status quo* to ensure that the public is not threatened by poorer performance of a design or equipment which is supposed to provide safety benefits. NHTSA relied on this important check against degradation of the safety performance of side impact protection in LTVs. The agency openly acknowledged that simply extending passenger car protection requirements to LTVs provides few new benefits when compared against historical crash data. Nevertheless, "it would prevent any future LTVs from being introduced into the market that are inferior in side crash safety performance to passenger cars." 60 FR 38749, 38754 (July 28, 1995).

The agency recognized that, despite the fact that there is already widespread compliance within the current LTV fleet with the dynamic performance requirements of FMVSS No. 214, there nevertheless is still a need to regulate in this area:

In past regulatory proceedings involving issues on which there is widespread compliance, the agency has generally concluded that there is no compelling safety need for it to act since vehicle manufacturers are already providing the requisite safety performance in the absence of a Federal requirement.

\* \* \* \* \*

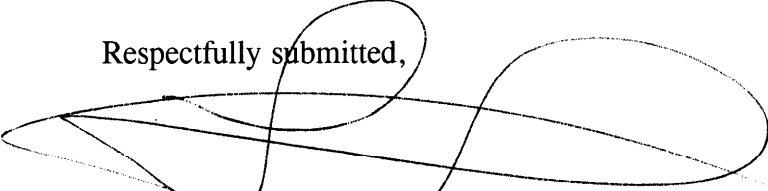
*On other occasions, however, the agency has proceeded with rulemaking to assure that there is no retreat from the existing level of safety.* For example, NHTSA issued a final

rule requiring installation of lap/shoulder belt systems in the rear seats of cars, although almost all models were already voluntarily slated to be so equipped within a few years of the rule.

NHTSA concludes it is similarly appropriate to extend Standard 214 to LTVs, to ensure that future LTVs subject to the standard provide protection under the same crash conditions as passenger cars. \* \* \* *In the absence of a federal standard, NHTSA cannot assure the public that the current level of protection will be continued in the future.* *Id.* at 38755 (emphasis supplied).

This argument displays perfect symmetry with the proposal to require a single braking-in-a-curve compliance test as a check against degradation of current ABS equipment safety performance. Although Advocates, in fact, was opposed to the agency not doing more to enhance the side impact protection of LTVs in the 1995 final rule, there is no question that the agency has the unchallenged discretion to ensure that current levels of safety performance do not deteriorate by installing requirements to ensure that certain minimal levels of safety continue to be produced by manufacturers. NHTSA has repeatedly achieved this by instituting appropriate regulatory requirements confirming specific safety performance. Moreover, there are no previous arguments of record lodged against this practice by NTEA, including the cited rulemaking extending passenger car side impact requirements to LTVs.

Respectfully submitted,



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